MBf Finance Bhd v Maniglow Sdn Bhd & Ors

HIGH COURT (SIBU) — SUIT NO 20–22–34 OF 1998
TEE AH SING J
2 NOVEMBER 1998

Civil Procedure *— Time — Extension of time — Application for — Seeking instructions from head office — Delay to reply to defence due to economic turmoil — Whether application bona fide*

The plaintiffs applied for an order that the time for a reply to the defence by the defendants be extended and that the plaintiffs be allowed to file and serve the reply within 14 days from the date of the order. The plaintiffs contended that the extension was necessary for them to get instruction from their head office in Kuala Lumpur and unfortunately, due to the economic situation, their head office had been overburdened with restructuring loans and loan recovery. Hence, the delay in the reply. The defendants objected to the contention and argued that the delay was due to the careless attitude, inefficiency and lack of respect to the rules of the court, of the plaintiffs. This was because all the documentation, information and particulars should be in the file in Sibu and that instructions from the head office was not necessary.

Held, allowing the application:

It was reasonable for the plaintiffs to get instructions from their head office. The delay was due to the economic turmoil; their head office had been overburdened with restructuring loans and loan recovery (see p 237H).

Further, prior to the expiry date, the plaintiffs had verbally requested for an extension of time and informed of their intention to seek instructions from the head office, but the defendants refused. Thus, the application for extension of time was bona fide (see pp 237I–238A).

[Bahasa Malaysia summary

Plaintif telah memohon untuk suatu perintah bahawa masa bagi membalas pembelaan defendan dilanjutkan dan plaintif dibenarkan untuk memfail dan menyerahkan balasan tersebut dalam tempoh 14 hari dari tarikh perintah tersebut. Plaintif menjelaskan bahawa perlanjutan masa adalah perlu bagi mereka mendapatkan arahan daripada ibu pejabat di Kuala Lumpur tetapi malangnya, oleh kerana keadaan ekonomi, ibu pejabat mereka telah dibebankan dengan banyaknya oleh pengstrukturan semula pinjaman serta mendapat kembali pinjaman. Maka, balasan tersebut lewat. Defendan telah membantah dan berhujah bahawa kelewatan tersebut adalah disebabkan sikap cuai, ketidakcekapan dan tidak hormat plaintiff kepada kaedah-kaedah mahkamah. Ini adalah kerana segala

dokumen, maklumat serta butiran sepatutnya berada di Sibu dan arahan daripada ibu pejabat adalah tidak perlu. A

Diputuskan, membenarkan permohonan:

Adalah munasabah bagi plaintif untuk mendapatkan arahan daripada ibu pejabat mereka. Kelewatan adalah disebabkan oleh keadaan ekonomi yang huru-hara dan ibu pejabat mereka telah dibebani dengan pengstrukturan pinjaman dan mendapat kembali pinjaman (lihat ms 237H). B

Tambahan pula, sebelum tarikh tamat, plaintif telah memohon secara lisan daripada defendan agar dilanjutkan masa dan memberitahu bahawa mereka perlu mendapatkan arahan daripada ibu pejabat, tetapi defendan menolak. Oleh itu, daripada tindakan yang telah diambil oleh plaintif, mahkamah mendapati bahawa permohonan perlanjutan masa tersebut adalah bona fide (lihat ms 237I–238A).] C

D

Notes

For cases on application for extension of time, 2(2) *Mallal's Digest* (4th Ed, Reissue) paras 4861–4867.

E

Cases referred to

Costellow v Somerset County Council [1993] 1 All ER 952 (refd)
Eaton v Storer (1883) 22 Ch D 91 (refd)
Ong Guan Teck & Ors v Hijjas [1982] 1 MLJ 105 (folld)

F

Legislation referred to

Rules of the High Court O 3 r 5(1), O 18 rr 8(1), 3(4)

John Tiong (*Tiong, Lim, Wong & Co Advocates*) for the plaintiffs.
Stephen Chung (*Stephen Robert & Wong Advocates*) for the defendants.

Cur Adv Vult G

Tee Ah Sing J: This is an application by summons in chambers under O 3 r 5 of the Rules of the High Court 1980 ('the RHC') by the plaintiffs for an order that the time for a reply to the defence of the first and second defendants be extended and that the plaintiffs be allowed to file and serve the reply within 14 days from the date of the order. H

The application is supported by the affidavit of Loi Hieng Sing affirmed on 30 July 1998. The pertinent parts of the affidavit read as follows:

(1) I am the Manager of MBf Finance Bhd, Sibu, the abovenamed plaintiffs and am duly authorized to make this affidavit on their behalf.

(2) On 18 June 1998, the advocates for the abovenamed first and second defendants served on Messrs Tiong, Lim, Wong & Co Advocates, Sibu the advocates for the plaintiffs a Defence dated 18 June 1998. I

(3) The claim herein involved a sum of over RM1 million and for which the plaintiffs have also filed an application in the Sibu High Court in Originating Summons No 24–70 of 1998 for an Order for Sale of the property charged as security therefor. The first and second defendants have challenged the legality of the flexiline facility under which moneys are alleged to have been owed by them. They also challenged the variation of interest rates. As such, I referred the whole matter to my Head Office for instructions.

(4) Unfortunately, due to the present economic turmoil, our Head Office has been overburdened with restructuring loans and loan recovery.

(5) In the premises, there was delay in giving instructions and this has resulted in the plaintiffs being unable to file and serve the Reply within 14 days from the date the Defence was served as stipulated, I am advised, by the Rules of the High Court 1980.

(6) The delay occasioned was unavoidable and was not intended to protract the proceedings. I verily believe that the first and second defendants would not suffer any real prejudice by the extension of time. I am also advised that the Reply is necessary so as to comply with O 18 r 8 of the Rules of the High Court 1980. There is now produced and shown to me marked 'A' and exhibited herewith a proposed Reply.

(7) Prior to the expiry of the 14-day period, the advocates for the plaintiffs have verbally requested from Messrs Stephen Robert & Wong Advocates, Sibu for an extension of time to file and serve the Reply and my having to seek instructions from head office was made known to them but the abovenamed second defendant who is also the director of the abovenamed first defendant refused to consent to an extension of time. There is now produced and shown to me marked 'B' and exhibited herewith a letter to the said advocates dated 4 July 1998. I verily believe that the refusal to consent was unreasonable and I thus pray for an order as to costs.

An affidavit in opposition was affirmed by Johnson Wong Siong Dung on 13 August 1998. The relevant parts read as follows:

(1) I am the second defendant in this action and I am also authorized to make this affidavit on behalf of the first defendant.

(2) I crave leave to refer to the plaintiff's Summons in Chambers dated 31 July 1998 and to the affidavit of Mr Loi Hieng Sing affirmed on 30 July 1998 and to make this affidavit in opposition thereto.

(3) The defence of the defendants in this action was filed and served on the plaintiff's Advocates Messrs Tiong, Lim, Wong & Co Advocates on 18 June 1998. I was advised and verily believe it to be true that in the event the plaintiff intended to file a reply to the defence, the plaintiff should do so before the expiration of 14 days after the service of the Defence.

(4) I crave leave to refer to the proposed Reply which is annexed as 'exh A' to the affidavit of Mr Loi Hieng Sing. The proposed reply is very simple and straightforward. It has not raised any complex issues of facts and law. It is something which can easily be drafted, filed and served within the 14 day period as required by the Rules of the High Court 1980.

(5) I verily believe that there is no necessity for Mr Loi Hieng Sing to seek instructions and advice from his head office at Kuala Lumpur. If the

plaintiff had in the first place given full and proper instructions to its advocates in order to prepare and file the Writ and Statement of Claim, there would be no necessity to refer the Defence to Kuala Lumpur. A

(6) As the Branch Manager at Sibu, he should know whether facility given to the first defendant was a current account, overdraft facility, flexiline facility or flexiloan facility or not and whether there had been any variations of interest rates. All these information and particulars should be in the file at Sibu as the transaction were in Sibu.' B

(7) The delays in giving proper instructions to its advocates and in filing the Reply were due to the careless attitude, inefficiency and lack of respect by the plaintiff for the Rules of the Court. This is not a sufficient ground to grant an extension of time. This is why I have instructed my lawyer not to agree to an extension of time.' C

An affidavit in reply was affirmed by Loi Hieng Sing on 21 August 1998. The relevant parts read as follows:

(2) I make this affidavit in reply to the affidavit of Johnson Wong Siong Dung affirmed on 13 August 1998 ('the said affidavit') which was served on the advocates for the abovenamed plaintiffs on 13 August 1998. D

(3) I crave leave to refer to paras 5 and 6 of the said affidavit and state that it was necessary for me to refer the case to my Head Office for instructions. My head office reviews all our loan recovery. The claim is for a very large sum and, to my knowledge, this is the first time that the flexiline facility has been challenged as illegal. It is a serious allegation which has to be examined by my head office. It is an allegation which was not anticipated by us. E

(4) I crave leave to refer to para 7 of the said affidavit and say in the premises that there was no inadvertent or deliberate delay on my part or on the part of my head office.

The learned counsel for the plaintiffs submitted that a request for extension of time to serve a reply was made in early July 1998 but the request was refused. There are two grounds of the application. The first ground is that the delay in filing the reply was unavoidable. Secondly, the matters raised in the proposed reply are necessary to comply with O 18 r 8(1) of the RHC. F G

The defendants will not suffer prejudice by the extension of time. He submitted that referring the matter to the head office was reasonable and that the delay was justified. In support the cases of *Costellow v Somerset County Council* [1993] 1 All ER 952 and *Eaton v Storer* (1883) 22 Ch D 91 were cited.

As to the question of costs this is normally given to the defendants but the defendants' conduct in the present case was most unreasonable. If the consent had been given this application would not have been necessary. And they would save on costs. H

The learned counsel for the defendants submitted that the plaintiffs do not have a right to come to court to demand on extension of time or to demand for a consent from the defendants. Under the rules, the defendants have a right to refuse such consent. Therefore, the plaintiffs cannot use that I

refusal of the defendants to say that the defendants were at fault resulting in the application. He submitted that the grounds of the plaintiffs are not sufficient grounds to persuade this court to exercise its discretion in favour of the plaintiffs. If the court rules against him then he ask that costs be given to the defendants in any event as this application is necessitated by the fault of the plaintiffs.

I shall now deal with the application.

The statement of defence was served on the plaintiffs on 18 June 1998. Under O 18 r 3(4) of the RHC 'a reply to any defence must be served by the plaintiff before the expiration of 14 days after the service on him of that defence.' In our instant case, the plaintiffs must file the reply on or before 2 July 1998.

The application for extension of time to file the reply was filed on 31 July 1998. So there has been a delay of about one month.

Order 3 r 5(1) of the RHC reads as follows:

> (1) The court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules or by any judgment, order or direction, to do any act in any proceedings.

In *Ong Guan Teck & Ors v Hijjas* [1982] 1 MLJ 105, His Lordship Hashim Yeop Abdullah Sani J (as he then was) at p 106 said:

> It is trite law that the court has an unfettered discretion to grant or refuse an extension of time. The first principle is that the rules of court must prima facie be obeyed and in order to justify an extension of time, there must be some material on which the court can exercise its discretion in favour of the applicant. For otherwise the party in breach of the rules would have an unfettered right to extension of time which would defeat the very purpose and object of the rules on limitation of period.
>
> In considering whether to grant or refuse extension of time the length of time that has lapsed is always a material factor to be considered by the court exercising the discretion. On the facts of this case I was not able to honestly say that there was any valid ground for the delay and therefore refused the application for extension of time.

Now, what are the circumstances of this case to enable the court to exercise its discretion?

The reasons for the delay are given in paras (3), (4), (5), (6) and (7) of Loi Hieng Sing's affidavit in support and para (3) of the affidavit in reply of Loi Hieng Sing.

I am of the view that it was reasonable for the plaintiffs to refer to their head office for instructions. The delay was that due to the present economic turmoil, their head office has been overburdened with restructuring loans and loan recovery. I find this as a reasonable explanation for the delay.

Further, prior to the expiry of the 14-day period the advocates for the plaintiffs have verbally requested from Messrs Stephen, Robert & Wong Advocates, Sibu for an extension of time to file and serve the reply and the

intention of the plaintiffs to seek instructions from their head office was made known to them but the second defendant who is also a director of the first defendant refused to consent to an extension of time. So, I find the application for extension was made bona fide. I find that the plaintiffs have shown sufficient grounds upon which the court can grant leave to extend time. So I allow the plaintiffs' application to extend the time to file the reply and that the plaintiffs shall file and serve the reply within 14 days from the date of this order.

Since the plaintiffs are at fault in not complying with O 18 r 3(4) of the RHC for failure to file the reply within 14 days, I order that the costs of this application should be paid by the plaintiffs to the defendants in any event. Such costs to be taxed unless agreed.

Plaintiffs' application allowed.

Reported by Zahid Taib